

REMARKS

Reconsideration and continuing examination of the above-identified application is respectfully requested in view of the amendments above and the discussion that follows.

Previously withdrawn claims 1 through 10 and 21 through 27 have been cancelled in view of the finality of the restriction requirement, and claims 13 and 14 were cancelled previously. Claims 11, 12 and 17 have been amended as discussed below. Claims 11-12 and 15-19 are in the case and are before the Examiner.

1. The Amendments

Claims 11, 12 and 17 have been amended by canceling hyphens that were present in the words of the claim due either inadvertence or to the length of the word and previous amendments that caused a wrapping to another line and insertion of a hyphen that now is not necessary. Some words that began with a hyphenated prefix that was left at the right margin have been moved in their entirety to the next line for ease in reading. In as much as no hyphens were added or deleted, it is not believed that a formalized amending notation was required and that notation has been omitted. It is thus seen that no new matter has been added.

2. The Action--Rejection Under 35 U.S.C. § 102

The Action separately rejected claims 11-12 and 15-19 over the disclosures of newly cited and relied-on U.S. Patent No. 5,679,791 to Crews, Jr. et al., hereinafter Crews, with specific direction to the disclosures at column 75, lines 20 and CAPLUS

185382-84-7 that refers to the same patent. That patent, and particularly that noted section, teaches 1,3,5-trisubstituted-1,3,5-triazine-2,4,6-trione compounds, one of whose substituents is a phenyl ring bonded directly to a triazine nitrogen atom. That phenyl must itself bear one substituent and can bear three substituents in addition to the bond to the triazine nitrogen. Of those three substituents, the one required substituent at the 3-position relative to the bond to the triazine ring must be either a nitro group, an amine or a substituted amine. This substituent is referred to as "Q" in that patent. (See, column 1, lines 45-55.) The Action asserted as to claims 11-12 that "R³ = substituted phenyl wherein F, Cl and NO₂". In regard to claims 15-19, the Action notes that Crews discloses that a glycine with its side chain hydrogen atom can be used to form an R¹ group. These bases for rejection are respectfully traversed as is discussed below.

Close examination of the present claims indicates that an R² group can *inter alia* be a specifically substituted phenyl group and that an R³ group can *inter alia* be a "benzyl" or "a substituted benzyl substituent". A phenyl substituent [C₆H₅-] contains a bond directly between the ring and the atom that is being substituted. A benzyl substituent [C₆H₅CH₂-] contains a methylene group (-CH₂-) interposed between the ring and the atom that is substituted.

It is respectfully submitted that the Crews disclosures are directed solely to the preparation and use of 1,3,5-trisubstituted-1,3,5-triazine-2,4,6-trione compounds bearing the above-noted triazine nitrogen-bonded 3-substituted phenyl

ring. It is respectfully submitted that neither the present nor the prior claims recite any compounds wherein a triazine-trione nitrogen atom is directly bonded to a substituent phenyl ring having three substituents in addition to the triazine-trione. It is further submitted that none of the compounds of the present or prior claims includes a triazine-trione compound one of whose nitrogen atoms is bonded to a substituent phenyl ring that itself contains a substituent nitro, amino or substituted amino group anywhere, let alone such a substituent that must be in the 3-position.

Looked at differently, a Crews compound 3-position-substituted phenyl ring can only be a R^2 group because phenyl or substituted phenyl is not a recited R^3 substituent. In addition, a 3-nitro-, 3-amino- or 3-(substituted)amino- substituent is not among those recited for R^2 .

It is therefore submitted that there is no anticipation here by a compound of the relied-on Crews disclosures. That being the case, this basis for rejection should be withdrawn.

It is further submitted that the relied-on disclosures cannot make the claimed compounds obvious. This is particularly the case as the 3-nitro group was present to be used to form a 3-amino compound that itself was used to form a 5-membered nitrogen-containing ring. No such compounds are disclosed or claimed herein. There is thus no suggestion here for one of ordinary skill in the art to alter the structure of a compound disclosed in the relied-on patent to adapt it to the subject matter claimed here, so the claimed compounds are also not obvious.

It is finally submitted that if the present rejection is maintained, it is premature as a final rejection. It is submitted that this new ground for rejection was not necessitated by the prior amendments, nor was it asserted to be so necessitated, so that the presently relied-on art is just as applicable to the prior claims as it is to the present claims. In addition, the present rejection is not based on information submitted in an information disclosure statement. As such, this art should have been asserted before, and the finality of this rejection is premature [MPEP 706.07(a)]. It is thus submitted that if this rejection is not withdrawn, its finality should be withdrawn, and a subsequent Action be sent

3. Summary


Claims 11, 12 and 17 have been amended. The basis for rejection has been dealt with and shown to be inapplicable and the final rejection, if maintained as a rejection, has been shown to be premature.

It is therefore believed that this application is in condition for allowance of all of the pending claims. An early notice to that effect is earnestly solicited.

No further fee or petition is believed to be necessary. However, should any further fee be needed, please charge our Deposit Account No. 23-0920, and deem this paper to be the required petition. This paper is being filed in duplicate.

The Examiner is requested to phone the undersigned should any questions arise that can be dealt with over the phone to expedite this prosecution.

Respectfully submitted,

By 
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CERTIFICATE OF MAILING

I hereby certify that this Reply and Amendment in duplicate, is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Mail Stop Non Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on April 22, 2004.


Edward P. Gamson